

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARLAND A. JONES,

Plaintiff,

v.

RICHARDS, et al.,

Defendants.

No. 1:20-cv-00639-NONE-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING MOTION
TO PROCEED IN FORMA PAUPERIS, AND
DISMISSING ACTION WITHOUT
PREJUDICE

(Doc. Nos. 7, 12, 16)

Plaintiff Garland A. Jones is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 29, 2020, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* (Doc. No. 7) be denied, and this action dismissed without prejudice, because plaintiff has three prior "strike" dismissals under 28 U.S.C. § 1915(g). (Doc. No. 12.) The magistrate judge further found that the allegations of plaintiff's complaint fail to show that he is in imminent danger of serious physical injury. (*Id.* at 2.) The magistrate judge provided plaintiff fourteen (14) days to file objections to the pending findings and recommendations. (*Id.*)

Plaintiff filed timely objections on June 15, 2020. (Doc. No. 13.) In his objections, plaintiff argues that the dismissals cited by the magistrate judge should not count as strikes

1 because he appealed from those dismissals. (*See id.* at 1–2.) Plaintiff also suggests that he
2 qualifies for the imminent-danger exception to the three-strikes rule. (*See id.* at 2.) Plaintiff also
3 filed a second motion to proceed *in forma pauperis* on July 15, 2020. (Doc. No. 16.)

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
5 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff’s
6 objections, the court finds the pending findings and recommendations to be supported by the
7 record and proper analysis.

8 The magistrate judge correctly found that three of plaintiff’s prior cases were dismissed
9 for failure to state a claim upon which relief can be granted. (Doc. No. 12 at 2.) Plaintiff
10 appealed from two of those dismissal orders: *Jones v. Tolson*, No. 1:15-cv-01037-JDP (E.D. Cal.
11 Sept. 14, 2015), and *Jones v. Mailroom Officials*, No. 1:17-cv-00281-LJO-SKO (E.D. Cal. Jan. 9,
12 2019). The Ninth Circuit Court of Appeals dismissed the first appeal for lack of jurisdiction. *See*
13 *Jones v. Tolson*, No. 16-15864 (9th Cir. June 13, 2016). The second appeal is still pending. *See*
14 *Jones v. Mailroom Officials*, No. 19-15345 (9th Cir.). Court records do not indicate that plaintiff
15 appealed the third dismissal cited by the magistrate judge. *See Jones v. Cal. Corrs. Healthcare*
16 *Servs.*, No. 2:17-cv-00738-WBS-DB (E.D. Cal.).

17 The Supreme Court has held that “[a] prior dismissal on a statutorily enumerated ground
18 [in 28 U.S.C. § 1915(g)] counts as a strike even if the dismissal is the subject of an appeal.”
19 *Coleman v. Tollefson*, —U.S.—, 135 S. Ct. 1759, 1763 (2015). Thus, plaintiff’s appeal of the
20 dismissal in *Jones v. Tolson*, No. 1:15-cv-01037-JDP, is counted as a strike even though his
21 appeal is still pending. Plaintiff, therefore, has accumulated three strikes under § 1915(g), and he
22 “may not file an additional suit *in forma pauperis* while his appeal of one such dismissal is
23 pending.” *Coleman*, —U.S.—, 135 S. Ct. at 1765.

24 The magistrate judge also correctly found that the allegations of plaintiff’s complaint fail
25 to satisfy the imminent-danger exception under 28 U.S.C. § 1915(g). (Doc. No. 12 at 2.) In his
26 objections, plaintiff states that

27 a violent action occurred on individuals Jones [Plaintiff] and Mao. It
28 is known that a violent attack on individuals at a 50/50 yard

1 institution is probable – Also I’ve been placed on a yard where Mao
2 was stabbed up with a predatory chrono.

3 (Doc. No. 13 at 2.) Plaintiff provides no further details or facts about the “violent action” against
4 him, and his claim that a “violent attack” against “individuals” is “probable” is speculative and
5 lacks factual support. Plaintiff thus has failed to show that he was in imminent danger of serious
6 physical injury at the time that his complaint was filed.

7 Accordingly,

- 8 1. The findings and recommendations issued on May 29, 2020 (Doc. No. 12) are adopted
9 in full;
- 10 2. Plaintiff’s motions to proceed *in forma pauperis* (Doc. Nos. 7, 16) are denied;
- 11 3. This action is dismissed without prejudice to refiling upon prepayment of the filing
12 fee; and,
- 13 4. The Clerk of the Court is directed to assign a district judge to this case for purposes of
14 closure and to close this case.

15 IT IS SO ORDERED.

16 Dated: August 26, 2020

17 
UNITED STATES DISTRICT JUDGE